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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Robert C. HOCHTRITT et al. Conf. 7581

Application No. 10/660,659 Group 3653

Filed September 12, 2003 Examiner Rashmi Sharma

DISPENSER FOR FOLDED ABSORBENT SHEET PRODUCTS

REPLY BRIEF

MAY IT PLEASE YOUR HONORS

Appellants address herein three new points of argument made in the Examiner's Answer of December 12, 2006.

First, regarding the indefiniteness rejection, the Examiner's Answer contends on page 8 thereof that

> "By no means can an angle be "more nearly vertical" or "more nearly horizontal" as recited in claim 1 if the angle is equal to or is about 45 degrees relative to the other section or relative to either the vertical or horizontal planes."

Although the above comment illustrates the Examiner's continuing confusion as to the claim language in question, it does not support the rejection of any of claims 8, 10 and 11 for indefiniteness.

For example, if the upstream dispenser section forms an angle of 45 degrees to the horizontal and the downstream dispenser section forms an angle of 30 degrees

to the horizontal, then clearly the orientation of the upstream section is more nearly vertical than that of the downstream section, and, as a corollary, the orientation of the downstream section is more nearly horizontal than that of the upstream section.

Similarly, if the upstream dispenser section forms an angle of 60 degrees to the horizontal and the downstream dispenser section forms an angle of 45 degrees to the horizontal, then equally clearly the orientation of the upstream section is more nearly vertical than that of the downstream section, and, as a corollary, the orientation of the downstream section is more nearly horizontal than that of the upstream section.

Notwithstanding the Examiner's apparent ongoing confusion as to this point, it is believed that the language of the claims is sufficiently clear, all the more so when those claims are understood in the context of the specification (page 7, line 24 to page 8, line 3), as they must be.

Second, regarding the prior art rejection, the Examiner's Answer contends for the first time at the bottom of page 8 that the imaginary dispenser resulting from the proposed combination of Petterson in view of Swift would "more easily dispense products."

However, as explained in Appellants' Brief, in fact such an imaginary dispenser would dispense the Petterson products significantly more poorly (and would not dispense Swift's paper cups at all). No citation to the record or other evidence is adduced for this remarkable new statement offered by the Examiner, and it is believed to be apparent that this contention is actually quite inconsistent with the record on appeal.

Third, also regarding the prior art rejection, the Examiner's Answer on page 9 seeks to dismiss Appellants' argument that the applied references teach away from the proposed combination by emphasizing that the secondary reference Swift is relied upon only for those limited portions of its disclosure that the Examiner would have the Board consider.

However, as the Board is aware, it is well-settled that a prior art reference must be considered for all that it discloses - not only for those portions that in isolation might point toward the claimed invention, but also for those portions that teach away from the claimed invention. See, e.g., *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 295 n.17 (Fed. Cir. 1985). The Examiner's approach of putting on blinders as to those portions of the applied references that teach away from the claimed invention is improper, and the

Examiner's invitation to the Board to do likewise should be declined.

It is believed that the above discussion of new points of argument raised in the Examiner's Answer underscores wherein the rejections on appeal are improper and should be reversed. Such action is accordingly respectfully requested.

Respectfully submitted,

YOUNG & THOMPSON

By _____ Reg. # 58,913

Andrew J. Patch
Attorney for Appellant
Registration No. 32,925
745 South 23rd Street
Arlington, VA 22202
Telephone: 703/521-2297

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